

Rule 16, Ariz. R. Crim. P. – pretrial motions

STATE’S MOTION TO ADMIT EVIDENCE UNDER RULE 404(b), ARIZONA RULES OF EVIDENCE

Evidence of other crimes, wrongs, or acts is admissible at trial to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The State of Arizona, by and through undersigned counsel, requests the following evidence to be admitted at trial under Rule 404(b), Arizona Rules of Evidence. The State’s motion is based upon the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS:

Richard Parrish, the victim, was a truck driver with the CB radio call of “Ugly Duck.” Richard met James Lee Daley (a.k.a. “Jimmy Lee”) and Cassandra Cates (a.k.a. “Cassie Daley”) in April of 1998 at The Flying J Restaurant in Dallas, Texas. At the time Richard met the couple, Jimmy Lee was a self-proclaimed member of the Sons of Silence and was selling methamphetamines to truck drivers. Jimmy Lee had his own CB radio call, “Shag Nasty.” Richard, Jimmy Lee, and Cassandra were engaged in the distribution of drugs; they made money by obtaining drugs and selling drugs to fellow truck drivers. The threesome ran this business out of Richard’s tractor truck. Jimmy Lee and Cassandra spearheaded Richard’s introduction into the drug business, and Cassandra and Jimmy Lee taught Richard how to acquire, separate, and sell the drugs.

Richard claimed to know of a man in El Paso, Texas who would sell them a kilo of cocaine for \$2,000.00. Jimmy Lee contacted Rick, a fellow member of the Sons of Silence

and also a Dirty Dozen member, and made an arrangement to sell Rick the kilo of cocaine. However, when Jimmy Lee and Richard went to Texas to buy the drugs, the deal in El Paso fell through. Instead, they arrived at Rick's house in Phoenix, Arizona, late with only an "eight-ball" [one-eighth of an ounce] of cocaine. Rick became upset with Jimmy Lee and told Jimmy Lee he could no longer sell methamphetamines here in Arizona. Rick advised Jimmy Lee that the only way Jimmy Lee could get back on his good side was to harm Richard and/or to stop riding with Richard. Rick insisted that something had to be done.

To do as Rick had ordered, during approximately the last week of September 1998, Jimmy Lee went to a truck stop in the Phoenix area. He attempted to shoot Richard while he slept in the truck, but the gun malfunctioned. Before he tried to kill Richard, Jimmy Lee told Cassandra that he had to shoot Richard, because that is what Rick had ordered. After the failed attempt Jimmy Lee bought a new gun and decided to hire someone to kill the victim.

On October 1, 1998, Jimmy Lee made contact with co-defendant Michael Greenleaf, whom he had met through the CB radio. On the night of the killing, Greenleaf agreed to "off Duck" for \$300.00 and a can full of drugs. Jimmy Lee told Richard that Greenleaf was going to buy drugs from them and the transaction was going to be conducted in Richard's truck. Richard was seated on the bed behind the two front seats. Cassie Daley, seated in the rear of the truck next to Richard, said that after a brief discussion in the truck, Greenleaf stood up, put a gun to Richard's chest, and fired. Greenleaf then shot the victim again. Greenleaf passed the gun to Jimmy Lee and Jimmy Lee fired one shot. Greenleaf took the gun back and fired at the victim's head.

Jimmy Lee then drove the truck around looking for a secluded area to dump the body. Before dumping the body, Jimmy Lee took the victim's jewelry. The three defendants then disposed of the victim's body by pushing it out along the roadside west of 51st Avenue and Southern. Jimmy Lee then returned Greenleaf to his car and paid him \$150.00, Greenleaf had received the can of drugs prior to the murder.

The victim was found the following morning on Friday, October 2, 1998, with multiple gunshot wounds to the upper chest and a gunshot wound to the head. During the evening of October 3, 1998, Cassie Daley (Cates) was located at the Red Roof Inn. Defendant Jimmy Lee Daley was apprehended driving the victim's tractor truck. Defendant Michael Greenleaf was taken into custody in the parking lot of the Travelers Inn on 51st Avenue south of I-10.

II. THE STATE INTENDS TO INTRODUCE THE FOLLOWING EVIDENCE:

1. The defendant, Jimmy Lee Daley, was a member of the Sons of Silence.
2. The victim, Richard Parrish, Jimmy Lee Daley and Cassandra Daley were engaged in an enterprise to acquire, sell and distribute drugs.
3. The victim was a novice and received training on how to acquire, separate, package and distribute drugs from Cassandra and Jimmy Lee Daley
4. The relationship between Jimmy Lee Daley and the victim became strained after a failed drug deal.

5. The defendant Jimmy Lee attempted to murder the victim two weeks prior to the murder.

6. The defendant Jimmy Lee purchased a gun after the failed murder attempt.

7. The defendant Jimmy Lee sold drugs to Michael Greenleaf prior to the murder.

8. The defendant Jimmy Lee hired Michael Greenleaf to murder the victim.

III. THE LAW:

Rule 404(b), Arizona Rules of Evidence, states:

(b) Other crimes, wrongs, or acts. Except as provided in Rule 404(c) evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

In *State v. Terrazas*, 189 Ariz. 580, 582, 944 P. 2d 1194, 1196 (1997), the Arizona Supreme Court adopted a new “clear and convincing” standard of proof for Rule 404(b) evidence. This standard is higher than that required by the United States constitution. See

Huddleston v. United States, 485 U.S. 681, 690 (1988). The *Terrazas* Court, however, continued to retain the other requirements of *Huddleston* for admission. They are (1) the evidence must be admitted for a proper purpose, that is, it must be legally or logically relevant (2) the evidence must be factually or conditionally relevant; (3) the trial court, if requested, must determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice; and (4) the trial court, if requested, must give a limiting instruction informing the jury that the evidence was admitted only for a limited purpose. *State v. Gulbrandson*, 184 Ariz. 46, 60, 906 P. 2d 579, 593 (1995), *see also State v. Van Adams*, 194 Ariz. 408, 415, 948 P.2d 16, 23 (1999).

The provisions of Rule 404(b), Arizona Rules of Evidence, are not limited to motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake but rather allows evidence that is relevant for *any* other purpose other than to show the defendant's criminal character. Included within the scope of Rule 404(b) are acts that rebut a defendant's claim. *State v. Schurz*, 176 Ariz. 46, 52, 859 P.2d 156, 162 (1993); *State v. Fierro*, 166 Ariz. 539, 547, 804 P.2d 72, 80 (1990); *State v. Cannon*, 148 Ariz. 72, 75, 713 P.2d 273, 276 (1985); *State v. Jeffers*, 135 Ariz. 404, 419, 661 P.2d 1105, 1120 (1983), *State v. Hernandez*, 167 Ariz. 236, 239, 805 P.2d 1057, 1060 (App. 1990); *State v. Tassler*, 159 Ariz. 183, 185, 765 P.2d 1007, 1009 (App. 1988); *United States v. Krapp*, 815 F.2d 1183, 1188-1189 (8th Cir. 1987). *See also State v. McCall*, 139 Ariz. 147, 152, 677 P.2d 920, 925 (1983)(It also may include evidence that complete the story of the crime.)

A. INTRINSIC, INTERTWINED EVIDENCE

In *State v. Dickens*, 187 Ariz. 1, 926 P. 2d 468 (1996), the defendant was convicted of a double homicide. His 14-year-old accomplice shot the two victims pursuant to Dickens's orders. Dickens claimed that his accomplice obtained the gun without his knowledge. He argued that, because he was neither present at the killings nor aware of what his accomplice was going to do, there was insufficient evidence to hold him accountable for the murders. He further argued the trial court erred in admitting Rule 404(b) evidence that he had stolen the murder weapon from a co-worker. The State introduced evidence that Dickens had stolen the murder weapon to prove Dickens's intent and accomplice liability. On appeal, the Arizona Supreme Court upheld the admission of evidence concerning the theft of the weapon. The Court reasoned that the evidence was probative for several reasons, including proper rebuttal of Dickens's claim that the accomplice had obtained the weapon without his knowledge. *Id.* at 18, 926 P.2d at 485.

The *Dickens* Court cited *United States v. Tutiven*, 30 F.3d 1, 5 (First Circuit, 1994).

Tutiven stated:

Evidence Rule 404(b) absolutely bars "other acts" evidence [when that evidence is] relevant only to prove criminal propensity or bad character. *United States v. Tuesta-Toro*, 29 F.3d 771, 775 (1st Cir. 1994). Its *absolute bar* is implicated, however, only if the challenged "other crimes, wrongs, or acts" are relevant *exclusively* to instigate an inference that the defendant is more likely to have acted in similar fashion by committing the offense for which he is on trial.

[Emphasis in original]. The *Dickens* Court held that the evidence concerning the theft of the gun was admissible because it was "intrinsic evidence," that is, evidence inextricably intertwined with the facts of the case. "Other act evidence is 'intrinsic' when evidence of the other act and evidence of the crime charged are inextricably intertwined, or both acts are

part of a 'single criminal episode' or the other acts were 'necessary preliminaries' to the crime charged." *Dickens, id.* at 19 n. 7, 926 P.2d at 486, *citing and quoting United States v. Coleman*, 78 F. 3d 154, 156 (5th Cir. 1996).

Here, evidence that Richard Parrish and Jimmy Lee Daley were engaged in an enterprise to acquire, sell, and distribute drugs is intertwined with the current crime. The victim, Richard, was a novice in the drug business. He received training on how to acquire, separate, package, and distribute drugs from Cassandra and Jimmy Lee Daley. The evidence of the victim and the defendant's drug activities is inextricably intertwined with the current crime because Jimmy Lee murdered the victim because of a failed drug deal.

Evidence of a continuous "criminal episode" began with the defendant and victim's strained relationship over a failed drug deal. Jimmy Lee then attempted to murder the victim, but the weapon malfunctioned and the attempt failed. Jimmy Lee then obtained a new gun and consequently, Jimmy Lee hired co-defendant Michael Greenleaf to murder the victim. Prior to hiring Michael Greenleaf, Jimmy Lee sold him an eight-ball of heroin. There was approximately a two week period of time between the attempted murder and murder.

This evidence is intrinsic, completes the story of the crime and does not require a weighing process. Therefore, this Court should allow the State to present evidence of the defendant's prior relationship with the victim under Rule 404(b), Arizona Rules of Evidence. In addition, the challenged evidence is also admissible to explain the motive and state of mind of the defendant, as the State will show.

B. MOTIVE AND STATE OF MIND

If this Court finds the evidence is not intrinsic, then a Rule 404(b) analysis is required. However, the probative value of this evidence clearly outweighs any unfair prejudicial effect, because this evidence is relevant both to establish the motive for the crime and to show the identity of the perpetrators.

Here, Jimmy Lee's membership in the Sons of Silence is relevant to establish motive and state of mind. Jimmy Lee had to appease Rick, his brother from the Sons of Silence, who was burned from a botched drug deal. Rick told Jimmy Lee to get rid of his problem, meaning the victim.

The strained relationship between the defendant and victim, arising out of a botched drug deal the victim set up, shows motive and intent. The relationship between Jimmy Lee and the victim was amicable until the victim could not produce the drugs he had promised to Rick, who was Jimmy Lee's drug connection. It was then that Rick told Jimmy Lee that he could mend his relationship with Rick by getting rid of his problem, meaning the victim, Richard Parrish.

The defendant's prior attempt to murder the victim shows premeditation. *State v. Williams*, 183 Ariz. 368, 376, 904 P.2d 437, 445 (1995)(defendant charged with attempting to rob and kill second woman because she was implicating him in killing of first woman); *State v. Wood*, 180 Ariz. 53, 62, 881 P.2d 1158, 1167 (1994)(evidence of defendant's prior assaultive conduct towards his girlfriend, and her fear and desire to end their relationship, was relevant to show motive and premeditation in killing her); *State v. Jeffers*, 135 Ariz. 404, 418-419, 661 P. 2d 1105, 1119-1120 (1983). Additionally, the failed attempt by Jimmy

Lee explains why he felt that he needed to hire Michael Greenleaf to actually complete the murder.

“[E]vidence of prior trouble between the victim and defendant derives its relevance from the fact that the existence of prior ill will toward the victim not only renders the commission of the crime more probable, but also tends to show the malice or motive of the defendant in perpetrating the crime.” *State v. Fulminante*, 161 Ariz. 237, 247, 778 P.2d 602, 612 (Ariz. 1988).

The State is further reserving the right to introduce any other act evidence that may become relevant if the defendant testifies. Such evidence will tend to prove or disprove the issues raised in this case.

IV. Conclusion

In conclusion, the State requests this Court to admit the other act evidence pursuant to evidence rule 404(B).